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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/227,749	01/08/99	BALIN	100521

HM22/0608

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EXAMINER

PESELEV, E

ART UNIT PAPER NUMBER

1623

10

DATE MAILED: 06/08/00

This is a communication from the examiner in charge of your application.  
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### OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 5/3/2000
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- Of the above, claim(s) 18-20 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-17 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7 and 9
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

S. A. 09/227, 749  
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Claims 18-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 5.

Applicant's election without traverse of Group I, claims 1-17, species macrolide in Paper No. 5 is acknowledged.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shor et al (U.S. Patent No. 5,424,187).

Shor et al disclose the use of a macrolide alone or in combination with an antiinflammatory agent for the treatment of Chlamydia pneumoniae infection (column 2, lines 67-68 and column 3, lines 1-10) but do not disclose the treatment of said infection in central nervous system (CNS). However, a person having ordinary skill in the art at the time the instant invention was made would have been motivated to treat any disease which involves infection by C. pneumoniae with a macrolide or a macrolide in combination with an antiinflammatory agent because the results obtained from such treatment would have been expected.

Applicant's arguments filed May 3, 2000 have been fully considered but they are not persuasive.

Applicants contend that it is well known that the efficiency with which any drug is able to cross the blood-brain barrier has a significant impact on its therapeutic application to the CNS. This argument has not been found persuasive because macrolide antibiotics are not known to be resistant to the blood-brain barrier. Further, to vary drug formulation and route of administration in order to make a drug able to cross blood-brain barrier would have been within the ordinary skill in the art at the time the instant invention was made.

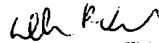
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (703) 308-4616. The examiner can normally be reached on Monday to Friday from 9.00 a.m. to 6.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
ELLI PESELEV  
PRIMARY EXAMINER  
GROUP 1200